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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 DANIEL JESTER,

12 Petitioner,

13 vs.

14 VIMAL SINGH, Warden,

15 Respondent.
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Civil No. 12CV110 BTM (PCL)

**ORDER DENYING MOTION TO
APPOINT COUNSEL**

17 **INTRODUCTION**

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19 On March 17, 2012, Petitioner, a state prisoner proceeding pro se, constructively filed
20 a Second Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc.
21 6.) On June 14, 2012, Petitioner filed a Motion for Appointment of Counsel. (Doc. 12.) For
22 the reasons set forth below, Petitioner's Motion for Appointment of Counsel is **DENIED**.
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24 **DISCUSSION**


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26 In this Motion, Petitioner requests the appointment of counsel to assist him in
27 prosecuting this civil action. The Constitution provides no right to appointment of counsel in
28 a civil case, however, unless an indigent litigant may lose his physical liberty if he loses the

litigation. *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 25 (1981). Nonetheless, under 28 U.S.C. § 1915(e)(1), district courts are granted discretion to appoint counsel for indigent persons. This discretion may be exercised only under “exceptional circumstances.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances requires an evaluation of both the ‘likelihood of success on the merits and the ability of the Plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. Neither of these issues is dispositive and both must be viewed together before reaching a decision.” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

Here, Petitioner does not set forth any arguments that he is entitled to appointed counsel. (Doc. 12, at 1.) Petitioner has been able to articulate sufficiently his legal claims, and he has not convinced this Court of the likelihood of success on the merits of his case. Thus, the Court **DENIES** Petitioner’s request without prejudice, as neither the interests of justice nor exceptional circumstances warrant appointment of counsel at this time. *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017.

IT IS SO ORDERED.

DATED: June 15, 2012



Peter C. Lewis
U.S. Magistrate Judge
United States District Court

CC: ALL PARTIES AND COUNSEL OF RECORD